

AMENDMENTS TO THE DRAWINGS

The attached sheet of drawings includes changes to Figs. 3 and 5-7. The changes include reference numeral 35 for an element of claims 14 and 27 that was previously unnumbered in these figures. No new matter is added by these amendments.

Attachment: 3 Replacement sheets

REMARKS

I. Status of the Application

This paper accompanies the filing of a request for continued examination (RCE) and is filed in response to the final official action dated August 21, 2008, wherein: (a) claims 14-17 and 19-27 were pending; (b) the drawings were objected to under 37 CFR 1.83(a) for failing to show every feature recited in claims 23 and 24; (c) claims 14-17 and 19-27 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite; (d) claims 14-17, 19, 20, and 22-26 were rejected under 35 U.S.C § 103(a) as unpatentable over GB 2250779A to Schuermann, et al. ("Schuermann"); (e) claim 21 was rejected under 35 U.S.C § 103(a) as unpatentable over Schuermann in view of U.S. Patent No. 4,925,237 to Bohn, et al. ("Bohn") and U.S. Patent No. 5,310,241 to Omoto, et al. ("Omoto"); (f) claim 27 was indicated to be allowable in substance; and (g) the specification was objected to.

This paper is filed after submission of an amendment on September 30, 2008, and receipt of an advisory action dated October 8, 2008, and applicant-initiated telephonic interviews of October 14 and 15, 2008.

By way of this response, claims 14, 23-25, and 27 are amended and claims 28-40 are new. Support for the amendments to the claims is found at paragraphs [0026] and [0027] and Figs. 3 and 5-7 of the published application, and elsewhere throughout the original specification and claims. Support for new claims 28-38 is found in original claims 15-17 and 19-26, and elsewhere throughout the original specification and claims. Support for new claims 39 and 40 is found at paragraphs [0010], [0023], and [0026] of the published application, and elsewhere throughout the original specification, drawings, and claims. Thus, claims 14-17 and 19-40 are pending and at issue. Payment of the \$300 fee for the six claims in excess of twenty is submitted herewith. As this response is filed with an RCE, reconsideration of the application, as amended, is solicited.

II. October 14 and 15, 2008 Applicant-initiated Interviews

The undersigned applicants' representative and Examiner Pedder conducted telephonic interviews on October 14 and 15, 2008. Agreement was reached on amendments to claims 14 and 27 that would remove the previous rejections under §112, second paragraph and place at least claim 27 in condition for allowance. The examiner agreed that further consideration would be required for claim 14 as amended herein.

The examiner also clarified that the statements of “judicial notice” in the August 21, 2008, official action applied only to limitations of claims 22-24 and 26. Particularly, notice was taken only of the recitations that the projection extends essentially over the entire width of the movable roof element front edge, the projection is affixed to the roof, the projection is integrated into the peripheral edge of the roof that is made of foam, and the roof includes drive and monitor elements. As discussed during the October 14 and 15, 2008 interviews, the applicants have not admitted any recitations of the pending claims as prior art. Below, the applicants respectfully traverse the characterization of the pending claims as including elements taught or suggested by common knowledge.

III. Allowable Subject Matter

The August 21, 2008, official action of submits that claim 27 would be allowable if rewritten to include all of the limitations of the base claims and any intervening claims as amended to overcome the rejections under 35 U.S.C. § 112. As agreed during the October 14 and 15, 2008, interviews, claim 27 is rewritten to overcome the previous § 112 rejections of claim 14 (the base claim) and to include all of the limitations of that claim. Claim 27 is, therefore, allowable.

Further, the applicants amend the specification paragraph [0026] to include the general recitations of previous claim 27, as supported at least by original Figures 3 and 5-7. The applicants respectfully request that the objection to the specification be withdrawn, as well.

IV. Drawing Objections

The official action asserts that the drawings fail to show (a) “the stop surface foamed onto the roof element” as recited in claim 23, and (b) “the stop surface integrated into the edge foaming” as recited in claim 24. The applicants previously amended claims 23 and 24 to recite “a projection” rather than the “stop surface.” The applicants assume that the official action meant “the projection” rather than “the stop surface.” By this amendment, the applicants amend claim 23 to recite that “the projection is affixed onto the movable roof element, the projection comprising foam” and amend claim 24 to recite that “the projection is integrated into a peripheral edge foaming of the movable roof element, the peripheral edge comprising foam.” Thus, as generally recited in amended claims 23 and 24 (as supported by paragraph [0027] of the application), the projection and the peripheral edge of the movable roof element may comprise foam. The “foam” and “foaming” recited in amended claims 23

and 24 refer to construction material for the projection and peripheral edge while “the peripheral edge” refers to a portion of the movable roof element. The claimed relationship is clearly illustrated in Figs. 3 and 5-7 of the present application. Particularly, paragraph [0027] of the application describes that Figs. 3 and 5-7 each show the projection 40 as affixed or integrated into the roof element (cover) 16 and that the projection may be formed by covers having peripheral foaming, for example, of PU [polyurethane or an equivalent] foam. Because the figures show every feature recited in amended claims 23 and 24, reconsideration and withdrawal of the drawing objections are respectfully requested.

V. Claim Rejections Under 35 U.S.C. § 112, second paragraph

Claims 14-17 and 19-27 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. As agreed during the October 14 and 15, 2008, interviews, independent claim 14 is amended to recite that the movable roof element defines an area that receives at least a portion of the seal. Regarding claim 21, applicants submit that the seal element can lie behind the projection within the area defined by claim 14 and illustrated in Fig. 3, for example, while simultaneously receiving the same. Further, claim 23 is amended to depend from pending claim 14, and claim 14 includes the antecedent basis for “the projection” as recited in amended claim 25. Because claims 15-17, 19, 20, 22-24, and 26 depend from claims that are amended to overcome the § 112 rejections, reconsideration and withdrawal of the rejections of claims 14-17 and 19-26 under § 112, second paragraph are respectfully requested.

VI. Claim Rejections Under 35 U.S.C. § 103

A. Claims 14 and 27

Claim 14 is amended to more clearly define the area that receives at least a portion of the seal element and claim 27 is amended to incorporate the limitations of amended claim 14, as agreed during the October 14 and 15, 2008 interviews. Particularly, the area recited in amended claims 14 and 27 is located between the projection and the movable roof element. The action presents Schuermann as disclosing a projection 1A that receives a portion of a seal. The projection 1A of Schuermann does not receive the seal, but merely engages the seal. Even if the projection 1A did receive the seal, Schuermann does not disclose that the seal is defined by the movable roof element as generally recited in amended claims 14 and 27. Rather, as the examiner indicates and Figs. 1 and 2 of Schuermann illustrate, the projection 1A merely rests on top of or directly engages the seal element. Therefore, Schuermann cannot teach or suggest receiving a seal, let alone

receiving a seal in an area defined by the movable roof element (i.e., an area behind the projection and below the movable roof element as shown in Figs. 3 and 5-7). Further, the recitations of claims 14 and 27 are not commonly known. Because Scheurmann in view of common knowledge does not teach or suggest every limitation of claims 14 and 27, these claims, and claims 15-17 and 19-26 depending therefrom, are allowable.

B. New Claims 39 and 40

New claims 39 and 40 generally recite that the closing motion of the roof element and the interfering body form an obtuse angle such that the projection contacts the interfering body obliquely when the closing motion brings the roof toward the seal and in a closed position. Further, the oblique contact between the projection and the interfering body prevents the projection from sliding onto the body during closing of the roof. While neither Schuermann nor Omoto discloses contact with an interfering body, assuming that an interfering body was positioned between the frame and roof element as recited in independent claims 14 and 27, neither reference teaches or suggests new claims 39 and 40. Rather, Fig. 2 of Schuermann discloses that the direction of the closing motion “f” slides the projection 1A horizontally across the top of the seal element to engage the seal. Likewise, Omoto discloses a horizontal sliding engagement of the seal as indicated by the arrow in Fig. 2 and the contact at element 6b. As discussed in the present application at paragraph [0025], this prior art sliding engagement of the seal element results in an insufficient reaction on the electric motor drive to trigger reversal of the roof. Especially when smaller interfering bodies are located between the frame and roof element, the sliding engagement cannot be distinguished from the force of normal seal engagement. Consequently, these prior art movable roofs cannot detect smaller interfering bodies or else require an increased crushing force for detection of interfering bodies, generally. Because neither Schuermann nor Omoto alone or in combination teaches or suggests the recitations of new claims 39 and 40, wherein the obtuse angle and the oblique contact between the projection and the body prevents the projection from sliding onto the body during closing of the roof, these claims are allowable.

C. Statements of Official Notice

The August 21, 2008, official action asserts that the applicants have not challenged statements of official notice regarding the characterization of portions of claims 22-24 and 26 as “common knowledge.” However, the applicants amended claims 22-24 and 26 by the July 7, 2008, Amendment “A” to particularly address the previous rejections.

Therefore, the present rejections of these claims based in part on "common knowledge" are first presented by the present official action and the applicants have not been given the opportunity to traverse the statements as applied to the current claims. The determination that the applicants have made any admission of prior art is improper because it is based on "common knowledge" rejections that are first presented by this action.

The applicants respectfully traverse the characterization of the pending claims as including elements taught or suggested by common knowledge. Specifically, the applicants traverse the official action's current assertion that the monitor recited in claim 26 and the structures recited in claims 22-24 are common knowledge in the art. First, the monitor recited in claim 26 cannot be considered common knowledge at least because there is no indication that any commonly known monitor includes any of the other elements included in claim 26. For example, the action does not indicate that commonly known monitors evaluate drive parameters derived from the drive, turn off and/or reverse the drive when evaluation of one or more drive parameters indicates that there is an interfering body between the seal element and the projection, or that the monitor is adapted to detect one or more parameter of the drive including current consumed by the electric motor drive, torque delivered by the drive, number and direction of revolutions of a driven shaft of the drive, rpm of the drive and positioning speed of the movable roof element. Second, the applicants are unclear as to what structures the action refers that "form the edge of the roof panel in a consistent manner across the edge and effectively seal" in claims 22-24. In fact, none of the claims recite the element "to form the edge..." cited in the action. Nevertheless, at least "the projection" as generally recited in amended claims 22-24 is not commonly known because the configuration of the projection recited claim 14 ("the projection extends from the front edge in a direction of a closing motion of the movable roof element and defines an area..."), from which claims 22-24 depend, is not commonly known. The applicants respectfully request presentation of adequate evidence supporting the rejections based in part on claim recitations that are alleged to be "common knowledge in the art" or "commonly known."

In light of the foregoing, it is believed that each of the pending claims is allowable over the cited references. The examiner is therefore solicited to reconsider and withdraw the outstanding rejections, and pass this application to issue.

VII. Specification Objection

The August 21, 2008, official action objects to the specification as failing to provide proper antecedent basis for the claimed subject matter, particularly, claim 27. The applicants amend paragraph [0026] of the specification to include a description of elements that were present in original Figs. 3 and 5-7 to provide antecedent basis for the recitations of claim 27. Because the specification amendment describes elements that were present in the original figures, this amendment does not introduce new matter. The applicants respectfully request that the specification objection be withdrawn.

VIII. Response to Arguments

The "Response to Arguments" portion of the August 21, 2008, official action states that "applicant apparently intends —stepped projection—in place of 'angled projection' in claim 1 [14]." The applicants respectfully submit that no meaning other than the recitations of the pending claims as supported by the original specification, claims, and figures was intended.

IX. Conclusion

A prompt indication of allowability is solicited. Should the examiner wish to discuss the foregoing or any matter of form in an effort to advance this application toward allowance, he is urged to telephone the undersigned at the indicated number.

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Respectfully submitted,

By 

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